

**Teledyne Economic Development and Service Personnel and Employees of the Dairy Industry, Teamsters Local Union No. 205 a/w International Brotherhood of Teamsters, AFL-CIO.**  
Case 6-CA-27849

April 30, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND COHEN

Upon a charge filed on January 31, 1996, the General Counsel of the National Labor Relations Board issued a complaint on February 22, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-11227 as representative of certain instructors and counselors employed by the Respondent (the Instructor/Counselor unit), and in Case 6-RC-11230 as representative of certain licensed practical nurses employed by the Respondent (the LPN unit). (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On March 25, 1996, the General Counsel filed a Motion for Summary Judgment. On March 28, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 18, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its contention in the representation proceeding that the Board lacks jurisdiction.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.<sup>1</sup> We therefore find that the Respondent has

<sup>1</sup> In its response to the Motion for Summary Judgment, the Respondent argues that the Board should reconsider the rule announced in *Management Training Corp.*, 317 NLRB 1355 (1995), and that special circumstances exist for the Board to reconsider its decision

not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.<sup>2</sup>

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent has been engaged in, among other things, the management and operation of the Pittsburgh Job Corps Center pursuant to a contract with the United States Department of Labor (DOL). The Respondent is a division of Teledyne Industries, a wholly owned subsidiary of Teledyne, Inc., a Delaware corporation headquartered in Los Angeles, California.<sup>3</sup>

During the 12-month period ending December 31, 1995, the Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000 and purchased and received for use at the Pittsburgh Job Corps Center facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6),

to exercise jurisdiction in the representation proceeding. The Respondent's arguments that the Board should reconsider the rule in *Management Training* were fully considered and rejected by the Board in the representation proceeding. Further, contrary to the Respondent's contention, we find no special circumstances here warranting reconsideration of the Board's decision in that proceeding or denial of the Motion for Summary Judgment. Even assuming, as asserted by the Respondent, that the Union's bargaining proposals include provisions on wages and other terms of employment that could not be changed without the approval of the Department of Labor, this is not a basis for reconsidering the Board's original jurisdictional finding. See *Management Training*, 317 NLRB at 1359. Nor does it excuse the Respondent's blanket refusal to bargain with the Union. Indeed, it is clear that the Respondent would have refused to bargain with the Union regardless of the nature of its proposals. Thus, in its reply to the Union's letter requesting bargaining and attaching bargaining proposals, the Respondent stated that it was refusing to bargain in order to test the Union's certification, and the Respondent admits in its answer and response that it is refusing to bargain with the Union for this reason.

In the underlying representation proceeding, Member Cohen dissented and, consistent with his dissent in *Management Training Corp.*, would have granted the Respondent Employer's request for review of the Regional Director's Decision and Direction of Election. Accordingly, Member Cohen does not join in the finding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to bargain with the Union as the exclusive representative of the employees in the units.

<sup>2</sup> Inasmuch as we are granting the General Counsel's Motion for Summary Judgment, we find it unnecessary to pass on the General Counsel's motion to strike portions of the Respondent's answer.

<sup>3</sup> The General Counsel's motion to amend the complaint to reflect the relationship between the Respondent and Teledyne, Inc. as set forth in the Respondent's answer is granted.

and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the elections held October 6, 1995, the Union was certified on October 17, 1995, as the exclusive collective-bargaining representative of the employees in the following appropriate units:<sup>4</sup>

#### *Case 6-RC-11227*

All full-time and regular part-time instructors and counselors employed by the Employer at the Pittsburgh Job Corps Center in Pittsburgh, Pennsylvania; excluding all office clerical employees, confidential employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

#### *Case 6-RC-11230*

All full-time and regular part-time licensed practical nurses employed by the Employer at the Pittsburgh Job Corps Center in Pittsburgh, Pennsylvania; excluding all office clerical employees, confidential employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. *Refusal to Bargain*

Since January 10, 1996, the Union, by letter, has requested the Respondent to bargain with it as the exclusive bargaining representative of the foregoing Instructor/Counselor and LPN units, and, since January 29, 1996, the Respondent has failed and refused to do so. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By failing and refusing on and after January 29, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

<sup>4</sup> Although the Respondent's answer denies the complaint allegations that the following units are appropriate units for collective bargaining, it is clear from the Respondent's answer and response that the sole basis for the denial of these allegations is the Respondent's contention that the Board lacks jurisdiction. In any event, having failed to raise any issue as to the scope and composition of the units in the representation proceeding, the Respondent is precluded from doing so in this proceeding.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Teledyne Economic Development, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

(a) Refusing to bargain with Service Personnel and Employees of the Dairy Industry, Teamsters Local Union No. 205 a/w International Brotherhood of Teamsters, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining units.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate units on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

#### *Case 6-RC-11227*

All full-time and regular part-time instructors and counselors employed by the Employer at the Pittsburgh Job Corps Center in Pittsburgh, Pennsylvania; excluding all office clerical employees, confidential employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

#### *Case 6-RC-11230*

All full-time and regular part-time licensed practical nurses employed by the Employer at the Pittsburgh Job Corps Center in Pittsburgh, Pennsylvania; excluding all office clerical employees, confidential employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

(b) Post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Service Personnel and Employees of the Dairy Industry, Teamsters

Local Union No. 205 a/w International Brotherhood of Teamsters, AFL-CIO, as the exclusive representative of the employees in the bargaining units.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining units:

##### *Case 6-RC-11227*

All full-time and regular part-time instructors and counselors employed by us at the Pittsburgh Job Corps Center in Pittsburgh, Pennsylvania; excluding all office clerical employees, confidential employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

##### *Case 6-RC-11230*

All full-time and regular part-time licensed practical nurses employed by us at the Pittsburgh Job Corps Center in Pittsburgh, Pennsylvania; excluding all office clerical employees, confidential employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.

TELEDYNE ECONOMIC DEVELOPMENT